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 before the
 Federal Communications Commission
 Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 95-103

In the Matter of

Amendment of Section 73.202(b), RM-8659
 Table of Allotments,
 FM Broadcast Stations.
 (Wyeville, Wisconsin)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 23, 1995; Released: June 30, 1995

Comment Date: August 21, 1995

Reply Comment Date: September 5, 1995

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Josephine Miracle ("petitioner"), requesting the allotment of Channel 267A to Wyeville, Wisconsin, as that community's first local broadcast service. Petitioner submitted an engineering analysis in support of the proposal and states her intention to apply for the channel, if allotted.

2. We believe the proposal warrants consideration because the proposed allotment would provide a first local service to Wyeville, Wisconsin. A staff engineering analysis indicates Channel 267A can be allotted to Wyeville consistent with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 8.7 kilometers (5.4 miles) east of the community.¹ The site restriction will prevent a short spacing to the allotment site for Channel 266C3, Station KHME, Winona, Minnesota.²

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "... among the several states and communities." The Commission has defined "communities" as geographically identifiable population groups. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community facts, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. See, e.g., *Oak Grove, FL*, 5 FCC Rcd 3774 (1990); *Hannibal, OH*, 5 FCC Rcd

3315 (1990); and *Statenville, GA*, 5 FCC Rcd 2685 (1990). We do recognize that Wyeville is incorporated and listed in the census, meeting the basic criteria for community status.³ However, we may find that a population grouping of 154 people does not constitute a community for allotment purposes where the community may be devoid of the customary factors associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and social or civic organizations and some form of government. See *Searles Valey, CA*, 3 FCC Rcd 5221 (1988); see also, *Naples, FL*, 41 RR ed 1549 (1977). Therefore, petitioner is requested to submit information regarding Wyeville to demonstrate whether it has any commercial establishments, social, economic, cultural or religious organizations, municipal services, or governmental units that identify themselves specifically with Wyeville.⁴

4. In view of the fact that the proposed allotment would provide a first local service to Wyeville, the Commission believes it would serve the public interest to solicit comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.
City	Present
Wyeville, Wisconsin	Proposed
	267A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before August 21, 1995, and reply comments on or before September 5, 1995, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Josephine Miracle
 206 East 19th Street
 Lockport, Illinois 60441

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the*

¹ The coordinates for Channel 267A at Wyeville are 44-01-39 and 90-16-35.

² Station KHME is currently licensed as a Class A facility. The licensee has filed under the one-step upgrade process as a 73.215 applicant for Channel 266C3.

³ The 1995 *Rand McNally Atlas* indicates the postal facility in Tomah, Wisconsin, serves Wyeville. Tomah has a 1990 Census population of 7,570 people and is located approximately seven

miles from Wyeville. Wyeville and Tomah are both located in Monroe County as is the Ft. McCoy military reservation.

⁴ It is always in the commenters' best interest to present the Commission with supporting evidence during the rule making process. Timely disclosure ensures that all information will be considered in the deliberations before an allotment is granted or denied.

Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.